IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

Trust Petition no. 9 of 2004

Mohammed Omar Haji Dawood . ... Petitioners

Mr. Nitin Thakkar
with Mr. Vikram Trivedi a/w.
Sachin Chandarana
i/b. M. K. Ambalal & Co., for Petitioners.

CORAM: **A. S. AGUIAR J.**

Date: 5/5/2005

P.C.

1. By this petition the Petitioners seek permission of this court to sell the property more particularly described in exhibit A to the petition on the ground that the trust properties are not fetching sufficient income and after meeting the outgoings very little amount is available to discharge the obligations on the trustees to meet the objects of the trust. It is stated that the property is proposed to be sold for an amount between 90 lakhs to 100 lakhs and this would be in accordance with the valuation of the property as per the valuation report of Knight Frank, renowned valuation experts. As per the said valuation report the value of the property proposed to be sold is

Rs.98 lakhs. The trustees have already held a meeting on 4th September 2004 and passed a resolution to sell the said property for consideration between 90 lakhs and 100 lakhs. The said resolution is at Exhibit “D”. The beneficiaries of the trust are Petitioner nos. 2 and 3 as well as two others , Arif Ali Wakani and Saeed Ali Wakani who are NRI's but have given their consent by letter dated 13th February 2005 to the sale of the said property. The said letters are Exhibits E and F to the affidavit of Petitioner no.2 dated 24th March 2005.

2. The trust is a private trust. The permission of this court is sought for sale of the property since the Deed of Settlement makes no provision for sale or alienation of the trust property. The application is under section 34 of the Indian Trusts Act 1882, which gives a right to the trustees to apply to the court for opinion in the management of the Trust property. It is the submission of learned counsel Mr. Thakkar for the Petitioners that although the Petitioners are seeking permission for sale of the property, strictly speaking, it is an application under section 34, since it is in the interest of effective management of the trust that the property is required to be sold. It is pointed out that the income from the trust property today is insufficient for its maintenance. If the trust property is sold and the

sale proceeds properly invested by the trust, a substantial income by way of interest would be generated. The trust is therefore seeking permission of this court for sale of the trust property at a price fixed in accordance with the Valuation Report of renowned Valuation Experts on the ground that the sale of the property would be in the interest of the trust.

3. Since there is no objection from any quarters to the proposed sale or alienation of the property, the Petitioners are permitted to sell the trust property at a price , keeping in mind the valuation of the property as stated in the valuation report, of not less than rupees one crore, on the condition that the sale proceeds are invested by the trustees either in a Nationalized Bank or in any other financial institution, permissible under the Income Tax Act.

4. In the circumstances the petition is made absolute in terms fo prayer clauses (a) and (b). Petition to stand disposed of.

C.C. Expedited.

(A. S. AGUIAR J.)

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